

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:

AWA Docket No. ~~14-0023~~NOV 05 2013
OALJ/HCOBEVERLY ANN FIELDS, an individual
doing business as B & B KENNEL,

Respondent.) COMPLAINT

14-0023
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There is reason to believe that the respondent named herein has willfully violated the regulations and standards (9 C.F.R. § 1.1 et seq.)(Regulations and Standards) issued under the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.)(Act). Therefore, the Administrator of the Animal and Plant Health Inspection Service (APHIS) issues this complaint alleging the following:

JURISDICTIONAL ALLEGATIONS

1. Respondent Beverly Ann Fields is an individual doing business as B & B Kennels, and whose business mailing address is 371 N.E. 105th Avenue, Galt, Missouri 64641. At all times mentioned herein, said respondent was operating as a dealer as that term is defined in the Act and the Regulations, and held license number 43-A-1235 until December 16, 2010, when respondent terminated her license.

ALLEGATIONS AS TO THE SIZE OF RESPONDENT'S BUSINESS, GRAVITY OF THE ALLEGED VIOLATIONS, GOOD FAITH AND COMPLIANCE HISTORY

2. Respondent provided APHIS with the following information regarding her business:

License renewal year	2008	2009
Number of Animals purchased	12	13
Number of Animals sold	252	215

In an affidavit executed April 8, 2010, respondent averred that she had custody of "approximately 100 adult breeding dogs."

3. Respondent was issued an Official Warning notice on May 2, 2006, for record-keeping and sanitation violations documented on July 27, 2005, January 4, 2006, and April 27, 2006. Thereafter, APHIS documented further and repeat non-compliance at respondent's facility at inspections conducted on September 8, 2006 (identification of dogs, cleaning and sanitization); February 1, 2007 (access for inspection); March 29, 2007 (attending veterinarian and adequate veterinary care, ventilation, surfaces of housing enclosures); July 26, 2007 (identification of dogs, record-keeping); and July 10, 2008 (veterinary care, identification, record-keeping, repair of primary enclosures). The violations alleged in this complaint include instances of neglect and failure to allow inspection.

ALLEGED VIOLATIONS

4. APHIS inspectors conducted or attempted to conduct inspections on November 12, 2008 (161 dogs inventoried), March 5, 2009 (170 dogs inventoried), May 20, 2009 (33 dogs inventoried), September 1, 2009 (105 dogs inventoried), December 15, 2009 (5 dogs inventoried), June 23, 2010 (162 dogs inventoried), October 13, 2010 (attempted inspection), and April 5, 2010 (attempted inspection).

5. On November 12, 2008, respondent failed to establish and maintain programs of adequate veterinary care that included the use of appropriate methods to prevent, control, and treat diseases and injuries, and specifically, respondent failed to maintain up-to-date and animal-appropriate medications on hand for use on dogs, in willful violation of the Regulations. 9 C.F.R. § 2.40(b)(2).

6. On November 12, 2008, respondent failed to identify five live dogs on the premises by an official tag, or an approved tattoo marking as required, in willful violation of the Regulations. 9 C.F.R. § 2.50.

7. On November 12, 2008, respondent willfully violated the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the Standards for dogs, as follows:

a. Respondent failed to ensure that interior surfaces and any surfaces that come into contact with dogs were free of jagged edges or sharp points that might injure the animals, and specifically, respondent housed three dogs in an enclosure in the whelping facility that had a broken section with sharp edges that could injure the dogs. 9 C.F.R. § 3.1(c)(1)(ii).

b. Respondent failed to ensure that the whelping building housing sixty-five dogs was sufficiently ventilated to provide for their health and well-being, and to minimize odors and ammonia levels. 9 C.F.R. § 3.2(b).

c. Respondent failed to provide adequate shelter from the elements for fifteen dogs housed in an outdoor barn. 9 C.F.R. § 3.4(b).

d. Respondent failed to provide adequate shelter from the elements for thirty dogs housed in nine enclosures, which enclosures lacked sufficient bedding. 9 C.F.R. § 3.4(b)(4).

e. Respondent failed to keep the premises for sixty-five dogs clean to protect the animals from injury, to facilitate the required husbandry practices, and to reduce or eliminate breeding and living areas for rodents and other pests and vermin. 9 C.F.R. § 3.11(c).

8. On March 5, 2009, respondent willfully violated the Regulations (9 C.F.R. §

2.100(a)), by failing to meet the Standards for dogs, as follows:

- a. Respondent failed to ensure that surfaces of housing facilities were free of jagged edges or sharp points that might injure the animals, and specifically, respondent housed dogs in an enclosure in the whelping facility that had a whelping box with chewed and/or broken edges that left sharp edges that could injure the dogs. 9 C.F.R. § 3.1(c)(1)(ii).
- b. Respondent failed to ensure that the interiors of sheltered housing facilities housing dogs were impervious to moisture, and surfaces of at least six enclosures were scratched, chewed and/or worn, such that bare wood and splinters were exposed. 9 C.F.R. § 3.3(e)(1).
- c. Respondent failed to maintain primary enclosures in good repair, and specifically, five enclosures had detached from the outside wall, leaving gaps that could injure the dogs. 9 C.F.R. § 3.6(a)(2)(ii).
- d. Respondent failed to keep primary enclosures clean and sanitized, and specifically, a brownish grime had accumulated on the outside to the access doors. 9 C.F.R. § 3.11(b).

9. On May 20, 2009, respondent willfully violated the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the Standards for dogs, as follows:

- a. Respondent failed to keep housing facilities for dogs in good repair, and specifically, respondent housed dogs in an enclosure in the whelping facility that had a large gap of three to four inches that posed a hazard to the dogs contained therein. 9 C.F.R. § 3.1(a).
- b. Respondent failed to provide adequate shelter for five dogs, and specifically, the shelters provided did not permit all of the dogs sufficient space to

make normal postural adjustments. 9 C.F.R. § 3.3(d).

c. Respondent failed to provide dogs housed in an outside enclosure with a wind and rain break at the entrance to the enclosure. 9 C.F.R. § 3.4(b)(3).

d. Respondent failed to maintain primary enclosures in good repair, and specifically, an outdoor enclosure contained a self-feeder that had sharp points that could injure dogs. 9 C.F.R. § 3.6(a)(2)(i).

e. Respondent's primary enclosures were not constructed and maintained with floors that protect the dogs' feet and legs from injury and did not allow the dogs' feet to pass through any openings in the floor, and specifically, in the whelping facility, an enclosure housing puppies had wire mesh flooring with gauge that permitted the puppies' feet to pass through the flooring. 9 C.F.R. § 3.6(a)(2)(x).

f. Respondent's primary enclosures were not constructed so that they provided dogs with sufficient space, and specifically, one dog was housed in an enclosure that did not provide sufficient space to allow the dog to stand in a normal position (9 C.F.R. § 3.6(c)(1)(iii)); and a dog with six puppies was housed in an enclosure that provided insufficient room for the number of animals contained therein (9 C.F.R. § 3.6(c)(1)(i)).

g. Respondent failed to keep food receptacles for dogs clean and sanitized in order to prevent the caking, deterioration, and molding of feed, and specifically self-feeders in five enclosures lacked lids, and outside enclosures contained self-feeders with caked food. 9 C.F.R. § 3.9(b).

h. Respondent failed to keep the premises free of accumulations of trash and discarded items, and specifically, there was clutter and discarded building

materials stored on top of animal enclosures. 9 C.F.R. § 3.11(c).

10. On September 1, 2009, respondent willfully violated the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the Standards for dogs, as follows:

a. Respondent failed to construct housing facilities for dogs with materials that can be readily cleaned and sanitized, and to replace materials that have become worn or soiled, and specifically, respondent housed dogs in four enclosures with excessive rust accumulation. 9 C.F.R. § 3.1(c)(1)(i).

b. Respondent failed to keep the premises free of accumulations of trash and discarded items, and to control grass and weeds, and specifically, there was clutter and discarded building materials next to animal buildings, and excessive weed growth. 9 C.F.R. § 3.11(c).

11. On December 15, 2009, respondent failed to have an attending veterinarian provide veterinary care to animals, and failed to establish and maintain programs of adequate veterinary care that include the use of appropriate methods to treat diseases and injuries, and specifically, respondent had not had the following animals evaluated and treated by a veterinarian, in willful violation of the Regulations (9 C.F.R. §§ 2.40(a), 2.40(b)(2)):

a. Female West Highland Terrier observed to be limping and non-weight-bearing on her right front leg, with areas between her toes that were red, inflamed and oozing;

b. Female Japanese Chin with loose stool and excessive feces adhered to her back legs and anal area;

c. Female Maltese with approximately 50% of her hair in matted condition;

d. Male Maltese with approximately 80% of his hair in matted condition, and

hair loss and reddened skin;

- e. Female Maltese with approximately 70-80% of her hair in matted condition;
- f. Female poodle with approximately 50% of her hair in matted condition; and
- g. Female poodle with approximately 60% of her hair in matted condition.

12. On December 15, 2009, respondent willfully violated the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the Standards for dogs, as follows:

- a. Respondent failed to spot-clean and sanitize hard surfaces that come into contact with dogs and cats on a daily basis in accordance with section 3.11(b) of the Standards, and specifically, respondent failed to clean the support wires underneath outside dog enclosures. 9 C.F.R. § 3.1(c)(3).
- b. Respondent failed to provide for the regular and frequent collection, removal and disposal of garbage, in a manner that minimizes contamination and disease risks, and specifically, respondent stored an open bag of garbage inside the shelter facility. 9 C.F.R. § 3.1(f).
- c. Respondent failed to provide adequate bedding for dogs housed in outdoor housing facilities when the ambient temperature was below 50 degrees Fahrenheit. 9 C.F.R. § 3.4(b)(4).
- d. Respondent's primary enclosures were not constructed and maintained with floors that protect the dogs' feet and legs from injury and did not allow the dogs' feet to pass through any openings in the floor, and specifically, in the whelping facility, an enclosure housing puppies had wire mesh flooring with gauge that permitted the puppies' feet to pass through the flooring. 9 C.F.R. § 3.6(a)(2)(x).

e. Respondent failed to sanitize water receptacles for dogs as often as necessary to prevent an accumulation of excreta, and specifically, there was feces visible in the water receptacle in one dog enclosure. 9 C.F.R. § 3.11(b)(2).

13. On June 23, 2010, respondent failed to have an attending veterinarian provide veterinary care to animals, and failed to establish and maintain programs of adequate veterinary care that include the use of appropriate methods to treat diseases and injuries, and specifically, respondent had not had a dog with a cloudy eye and generalized hair loss evaluated by a veterinarian, in willful violation of the Regulations. 9 C.F.R. §§ 2.40(a), 2.40(b)(2).

14. On June 23, 2010, respondent willfully violated the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the Standards for dogs, as follows:

a. Respondent failed to design and construct structurally sound housing facilities for dogs, and failed to keep facilities in good repair to protect the dogs from injury and contain them securely, and specifically, respondent's enclosures in the whelping house swayed when the dogs moved in them or when pressure was applied to them, two dogs escaped from respondent's enclosures, and dogs were observed putting their heads through the wire mesh panels of the enclosures. 9 C.F.R. § 3.1(a).

b. Respondent failed to spot-clean and sanitize hard surfaces that come into contact with dogs on a daily basis in accordance with section 3.11(b) of the Standards, to prevent accumulation of excreta and reduce disease hazards, and specifically, there was an accumulation of grime on the outside walls of the South Building facility. 9 C.F.R. § 3.1(c)(3).

c. Respondent's primary enclosures were not constructed and maintained

so that they enable all surfaces in contact with dogs to be readily cleaned and sanitized in accordance with § 3.11 of the Standards, or replaceable when worn or soiled, and specifically, respondent failed to replace chewed food and water dishes in the whelping house, which dishes had been chewed and pitted, with imbedded grime. 9 C.F.R. § 3.6(a)(2)(ix).

d. Respondent failed to control grass and weeds, and specifically, there was excessive weed growth on the south side of the sheltered "South Building" facility. 9 C.F.R. § 3.11(c).

15. On April 5, 2010, and October 13, 2010, respondent failed to provide APHIS inspectors access to her facilities, records and animals and failed to have a responsible person available to conduct inspections on her behalf, during normal business hours, in willful violation of the Act (7 U.S.C. § 2146(a)) and the Regulations (9 C.F.R. § 2.126(a)).

WHEREFORE, it is hereby ordered that for the purpose of determining whether the respondent has in fact willfully violated the Act and the regulations issued under the Act, this complaint shall be served upon the respondent. The respondent shall file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250-9200, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 *et seq.*). Failure to file an answer shall constitute an admission of all the material allegations of this complaint.

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The Animal and Plant Health Inspection Service requests that unless the respondent fails to file an answer within the time allowed therefor, or files an answer admitting all the material allegations of this complaint, this proceeding be set for an oral hearing in conformity with the Rules of Practice governing proceedings under the Act; and that such order or orders be issued as are authorized by the Act and warranted under the circumstances.

Done at Washington, D.C.
this ~~6~~¹⁴ day of ~~October~~ 2013
Matthew *fs*

[REDACTED]
Administrator
Animal and Plant Health Inspection Service

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